

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Appeal of the
Revocation of the Family Child Care
License of Lisa Christianson

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy on January 31, 2012, at the Health Services Building, Room 112, 525 Portland Avenue, Minneapolis, Minnesota. The OAH record closed at the conclusion of the hearing that day.

Frederic S. Stephens, Assistant County Attorney, Hennepin County Attorney's Office, Health Services Building, 525 Portland Avenue, Suite 1210, Minneapolis, MN 55415-0972, appeared for Hennepin County Human Services and Public Health Department and the Minnesota Department of Human Services (Department). Lisa Christianson (Licensee) appeared for herself without counsel.

STATEMENT OF ISSUES

Is there good cause to terminate a variance and revoke the Licensee's family child care license because of the disqualification of her adult son, who does not live in her home?

The Administrative Law Judge concludes that the variance is no longer necessary and the license should not be revoked because the disqualified individual does not live with the Licensee and there is not reasonable cause to believe he will have unsupervised access to children in care.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Lisa Christianson has been a daycare provider since 1994. She lives at 1321 South Diamond Lake Road in Champlin, Minnesota. She is married and has four sons, two of whom (ages 21 and 22) currently live in her home.¹

2. Ms. Christianson has another son, C.C., who is 25 years of age. When C.C. was 17 years old in 2004, the Department determined by a preponderance of the evidence that he had committed a second-degree burglary. Based on this determination, he was disqualified from access to children in care. The Department granted a variance to permit Lisa Christianson to continue to provide child care despite C.C.'s disqualification, on the condition that there be no further disqualifying factors and that the license holder report any additional information about possible criminal history to the County licenser.²

3. Since 2004, the variance to Ms. Christianson's license has been renewed each time her license was up for renewal, and the terms have not changed. On licensing renewal forms completed in December 2009, Ms. Christianson identified C.C. as a resident of her home.³

4. In December 2009, the Christiansons bought a house at 1313 South Diamond Lake Road, two houses down the street from their own home. Their intent in buying the house was to help out their adult children and to encourage them to move out of the family home. The house had been in foreclosure and needed some renovation work, which took a few months. In February 2010, C.C. moved into the home at 1313 South Diamond Lake Road. His older brother subsequently joined him there.⁴

5. Since February 2010, C.C. has resided at 1313 South Diamond Lake Road. He continued to use his parents' address as his mailing address, and he did not change his driver's license to reflect the move until recently.⁵ His parents did not encourage him to change his mailing address because they had co-signed some educational loans made to C.C., and they were making the loan payments for him. They wanted to make sure they received the loan statements.⁶

6. In December 2010, Ms. Christianson's license was up for renewal. She advised the licensing worker that C.C. had moved out of the house, as had one of her other sons. Although C.C. was not listed as a household member on the renewal form, the licensing worker told Ms. Christianson that she should nonetheless submit a

¹ Ex. 1 at p. 3; Ex. 2; Testimony of Lisa Christianson.

² Ex. 1.

³ Testimony of Tim Hennessey; Ex. 4.

⁴ Testimony of Kent Christianson; Testimony of C.C.

⁵ Test. of C.C.

⁶ Test. of L. Christianson.

background study request for C.C. if there was “any possibility [he] could enter the house during daycare hours.”⁷

7. On January 25, 2011, Ms. Christianson submitted a background study request for C.C., as directed by the licensing worker.⁸

8. On February 7, 2011, C.C. was charged with misdemeanor theft. In connection with the criminal charge, C.C. admitted that he was addicted to heroin.⁹

9. The Christiansons learned of C.C.’s addiction that day. They immediately arranged for him to enter a drug treatment program at Hazelden, which C.C. entered on February 9, 2011.¹⁰

10. C.C. completed the treatment program at Hazelden and attended an aftercare program at Unity Hospital. He participates in a recovery program and attends AA meetings twice a week. He is employed as a pizza delivery driver. He goes to his parents’ home occasionally during the evening hours or on weekends to retrieve mail and to use their computer. There is no evidence that, since the time C.C. moved, he has ever been in his parents’ home when children are in care.¹¹

11. In May 2011, the County notified C.C. and Lisa Christianson that C.C. had been disqualified from direct contact with persons served by the program based on its determination by a preponderance of the evidence that he had committed a misdemeanor theft in February 2011.¹² The letter to Ms. Christianson provided that C.C.’s continued presence in the program was allowed if he requested reconsideration and if she ensured that he would be continuously within sight or hearing of an adult caregiver whenever he was in a position allowing direct contact with children in care.¹³

12. C.C. did not seek reconsideration of the disqualification, believing it to be unnecessary since he does not live with his parents.¹⁴

13. Lisa Christianson has informed all daycare parents about C.C.’s difficulties. She did not attempt to hide either his drug problem or his arrest from licensing authorities. She sent in the background request form as directed by the licensor, and she did not believe she was obligated to advise the licensor about the arrest occurring after the background study was forwarded because C.C. was not a member of her household.¹⁵

⁷ *Id.*

⁸ Test. of T. Hennessey.

⁹ Ex. 5.

¹⁰ Test. of K. Christianson.

¹¹ Test. of C.C.

¹² Exs. 6 and 7.

¹³ Ex. 7.

¹⁴ Test. of C.C.

¹⁵ Test. of L. Christianson.

14. In July 2011, Ms. Christianson wrote to the County advising that C.C. did not reside in her home and did not come there when children were in care. She also stated that C.C. had changed his driver's license to reflect the address at 1313 S. Diamond Lake Road. He has since changed his mailing address as well.¹⁶

15. The parents of Ms. Christianson's daycare children strongly support her and contend her license should not be revoked. They maintain that Ms. Christianson has kept them informed of all developments in her family and that she has never compromised the care or safety of their children. They confirm that she has provided exceptional care and has always been open and honest with them. They are aware of C.C.'s current living situation and of Ms. Christianson's decision to prohibit him from being there during daycare hours.¹⁷

16. On November 9, 2011, the Commissioner issued an Order of Revocation to Ms. Christianson. The Order provided that Ms. Christianson and her son had violated the terms of the variance when he became involved in new criminal behavior and she failed to immediately report the information to the county. The Order terminated the variance and revoked the family child care license.¹⁸

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Commissioner of Human Services have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50 and 245A.08 (2010).¹⁹

2. The Department of Human Services gave proper and timely notice of the hearing in this matter.

3. The Department has complied with all relevant procedural requirements of statute and rule.

4. The commissioner shall conduct a background study on an individual who, without providing direct contact services at a licensed program, may have unsupervised access to children or vulnerable adults receiving services from a program, when the commissioner has reasonable cause.²⁰

5. The Commissioner lacked reasonable cause to subject C.C. to a background study in December 2011 because there is no evidence to suggest that he might have unsupervised access to children in care.

¹⁶ Ex. 3.

¹⁷ Exs. 10 (Jerald Kraft and Rachel Mero); Ex. Ex. 11 (Kim and Brian Babst); Ex. 12 (Bill and Lisa Lund); Ex. 13 (Kara Schmidt).

¹⁸ Ex. 8.

¹⁹ All references to Minnesota Statutes are to the 2010 edition.

²⁰ Minn. Stat. 245C.03, subd. 1(a)(6).

6. The commissioner may suspend or revoke a license if a license holder, a controlling individual, or an individual living in the household where the licensed services are provided or is otherwise subject to a background study has a disqualification which has not been set aside under section 245C.22, or if a license holder knowingly withholds relevant information from or gives false or misleading information to the commissioner in connection with an application for a license, in connection with the background study status of an individual, during an investigation, or regarding compliance with applicable laws or rules.²¹

7. The commissioner may terminate a variance for a disqualified individual at any time for cause.²²

8. The commissioner lacked cause to terminate the variance for C.C. because he no longer resided in the Licensee's home when he was charged with second-degree burglary in February 2011.

9. When applying sanctions under this section, the Commissioner shall consider the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program.²³

10. Revocation of the license is not warranted under Minn. Stat. § 245A.07, subd. 1.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: That the Commissioner rescind the revocation of the family child care license of Lisa Christianson.

Dated: March 2, 2012.

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record and may adopt,

²¹ Minn. Stat. 245A.07, subd. 3(a).

²² Minn. Stat. § 245C.30, subd. 4.

²³ Minn. Stat. § 245A.07, subd. 1.

reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. § 14.61 (2006), the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Lucinda Jesson, Commissioner, Department of Human Services, 540 Cedar Street, St. Paul, MN 55164, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a (2006). In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

MEMORANDUM

The Background Studies Act provides authority for the commissioner to require a background study of an individual who, without providing direct contact services at a licensed program, may have “unsupervised access” to children receiving services from a program, when the commissioner has reasonable cause.²⁴ In this case, the County does not dispute that C.C. moved from the Licensee’s home in February 2010 and makes no argument that he has ever been present in the Licensee’s home during child care hours since that time. The licensing worker advised the Licensee that a background study should be submitted for C.C., even though he did not live there, if there was “any possibility he might come into the home” during daycare hours. In recommending revocation, the County contended that given C.C.’s proximity to the licensed home, his failure to report a change of address for his driver’s license, and his failure to change his address with the postal service “make it difficult to conclude that *he will have no contact with the daycare home*.”²⁵ This is not the same thing as having reasonable cause to believe C.C. might have *unsupervised* access to children in care. Nothing in the record suggests that this has been or will be the case.

The Licensee’s commitments to preclude contact C.C. from having contact with daycare children can be enforced through appropriate conditions placed on the license. The Administrative Law Judge does not believe that revocation of the license, on this record, would comport with Minn. Stat. § 245A.07, subd. 1.

K.D.S.

²⁴ Minn. Stat. § 245C.03, subd. 1(a)(6).

²⁵ Ex. 1 at p. 5.